

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **May 14, 2002**

AGENDA ITEM NO.: **28**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Supplemental Water Agreement with Campbell County Utilities and Service Authority (CCUSA) and Campbell County for the Mt. Athos Area**

RECOMMENDATION: Approval of the attached resolution authorizing the City Manager to sign the attached agreement

SUMMARY: In response to previous direction from City Council, staff has negotiated the attached agreement with representatives of CCUSA and Campbell County. The purpose of the agreement is to promote economic development in the Mt. Athos area by providing City water to major industries at that location.

Major provisions of the agreement include the following:

- a. commits the City to construction of water lines from Candler's Mountain to the Campbell County line by June, 2003; (see attached schematic diagram for location);
- b. states City's intent to sell water for this purpose for the next 25 years;
- c. provides City with guaranteed payments equal to debt service and operating and maintenance expenses of these lines; and
- d. prevents City water from being used to serve major new retail and commercial development in this area without City approval.

PRIOR ACTION(S):

February, 2001 : status report to City Council on the Route 460 East Waterline Extension

August, 2001 City Council Work Session : discussion of Route 460 East Waterline Extension

FISCAL IMPACT: Estimated City construction costs : \$3.13 million to be financed by bond proceeds; Revenues equal to debt service plus operating and maintenance costs are guaranteed by CCUSA.

CONTACT(S): Bruce McNabb, Direc. Of Public Works, 847-1823
Kimball Payne, City Manager, 847-1443

ATTACHMENT(S): Resolution
Supplemental Agreement
Feasibility Study Schematic Map

REVIEWED BY:

Resolution:

BE IT RESOLVED That the City Manager, L. Kimball Payne, III, is authorized to execute the First Supplement to the Water Purchase Contract with the Campbell County Utilities and Service Authority and the County of Campbell.

Adopted:

Certified:

Clerk of Council

099L

FIRST SUPPLEMENT TO WATER PURCHASE CONTRACT

THIS FIRST SUPPLEMENT TO WATER PURCHASE CONTRACT, made and dated this _____ day of _____, 2002, by and between the Campbell County Utilities and Service Authority, hereinafter "Authority", the City of Lynchburg, Virginia, hereinafter "City" and the County of Campbell, Virginia, hereinafter "County".

WHEREAS, The Authority and City entered into a Water Purchase Contract dated July 27, 1995 ("Contract"); and,

WHEREAS, the Contract provides, among other things, for the sale by the City of potable water to the Authority for resale to the Authority's customers within specified areas of Campbell County and to other portions of Campbell County provided the City has available capacity for such expansion; and,

WHEREAS, the Authority desires to expand its water system to serve the Route 460 East/Mt. Athos Service Area of Campbell County as defined in Exhibit A, hereto attached and by reference made a part hereof, (the "Route 460 East / Mt. Athos Service Area"); and

WHEREAS, the parties desire to supplement the terms of the Contract as set forth herein.

NOW, THEREFORE WITNESS, that for and in consideration of the premises set forth herein the parties agree as follows:

1. The City will provide up to 1.136 million gallons of water per day (the "Supplemental Water") for use by the Authority in supplying potable water service to the Authority's customers in the Route 460 East/ Mt. Athos Service Area. The water being supplied under this Supplemental Agreement is for the primary purpose of meeting the growth and future development needs of existing businesses in the Route 460 East/Mt. Athos Service Area. In addition to supplying water to meet the needs of existing businesses in the Route 460 East/Mt. Athos Area, approximately 86,000 gallons of water per day is being supplied to the Authority for its own uses. This Supplemental Water is in addition to any water supplied pursuant to Section I.C. of the Contract.
2. The parties acknowledge that Lynchburg Foundry Company, d/b/a Internet Archer Creek Foundry ("Internet") was an original planned participant in the project as outlined in the "Feasibility Study for Water Service Along Route 460 Corridor from City of Lynchburg to Town of Appomattox", as prepared by Wiley & Wilson, Lynchburg, Virginia, dated January 16, 1998 (the "Wiley & Wilson Feasibility Study"). The parties agree that if Internet decides it would like to purchase water from the Authority or other industrial development occurs within the Route 460/Mt. Athos Service Area that the sale of additional water to the Authority by the City will be negotiated in good faith.

3. The City and the Authority shall construct the mains required to furnish the Supplemental Water to the Route 460 East/ Mt. Athos Service Area along with the potential future capacity specified in the Wiley & Wilson Feasibility Study in accordance with the Wiley & Wilson Feasibility Study. Subject to any act of God, strikes, lockouts, acts of public enemies, wars, terrorists attacks, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, arrests, and restraints of rules and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which had been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome, the Authority and City agree that the improvements necessary to provide service to the Route 460 East/ Mt. Athos Service Area shall be operational by June 30, 2003. The date that such improvements are fully operational shall referred to as the "Service Date."
4. It is the City's intent to provide potable water capacity to the Route 460 East/ Mt. Athos Service Area subject to the same terms and conditions set forth in the Contract and this Supplement to Water Purchase Contract for a minimum of 25 years. Consequently, for a period of 25 years following the Service Date, as defined above, the City agrees that it will not terminate the Contract under Section II.B. or C of the Contract unless the City, in its reasonable discretion and acting in good faith, determines that the water being sold under this Supplemental Agreement is necessary to meet the needs of the City, its citizens, businesses or industries and the City, in its reasonable discretion and acting in good faith, determines that there is no other reasonable alternative for supplying the City's water needs. The Authority and City agree that rates charged by the City are subject to good faith renegotiation at the specified Contract renewal dates.
5. Effective on the Service Date, the Authority agrees to purchase water from the City based on one of the following:
 - a. Except as set forth in paragraphs 5.b, 5.c., and 5.d. below, each month the City will bill and the Authority will pay for the water actually consumed in a month as metered at the City/County boundary line on Route 460 East.
 - b. In the event that BWX Technologies Inc. ("BWXT") in any month fails to consume an average of 500,000 gallons per day but pays for 500,000 gallons per day as provided by its agreement with the Authority, then the Authority will pay the City the greater of the water actually consumed or 500,000 gallons per day multiplied by the number of days in the month.
 - c. In the event that BWXT in any month fails to both consume and pay for a minimum of 500,000 gallons multiplied by the number of days in the month, the Authority will pay the City the sum of i) the Monthly Debt Service, as defined below, plus ii) the amount of water actually consumed in that month. In the event that the Authority later recovers from BWXT

the minimum payment specified under the agreement with BWXT, the Authority shall pay the City the amount that otherwise would have been due the City under paragraphs 5.a. and 5.b. above less sums previously paid under this paragraph.

- d. Notwithstanding anything in this Supplement or the Contract to the contrary, in the event that the City restricts the amount of water that the Authority may purchase pursuant to Section VIII.B. of the Contract or reduces the amount of water that the Authority may purchase pursuant to paragraph 6 below, and under such restrictions or reductions the City provides the Authority with less than the minimum amount of water specified in paragraph 1, above, then the Authority shall pay for the greater of i) the water actually consumed or ii) the amount of water made available to the Authority for consumption under the restrictions at the billing rates calculated pursuant to the terms of the Contract.

For purposes of this paragraph 5, Monthly Debt Service shall mean the actual payments made by the City in a calendar year for the debt incurred by the City related to the construction of the Route 460 water line as specified in the Wiley & Wilson Feasibility Study by the number of months in which payments are made during said calendar year.

6. As provided in paragraph 1. above, the primary purpose of the City selling water to the Authority under this Supplemental Agreement is to meet the growth and future development needs of existing businesses in the Route 460 East/Mt. Athos Service Area.. The existing businesses that are to expected to use the bulk of the water supplied under this Supplemental Agreement are BWX Technologies (an estimated average of a minimum of 500,000 gallons of water per day and a maximum of 1,000,000 gallons of water per day) and Framatome (an estimated average of 50,000 gallons of water per day). In the event either of these businesses decides it does not wish to purchase water from the Authority, the City shall have the right to reduce the amount of water being sold to the Authority under this Supplemental Agreement by the amount of water being sold to the Authority for such business's use. Further, the Authority and the County agree that none of the water supplied under this Supplemental Agreement can be sold to a new retail/commercial facility or complex containing 50,000 square feet or more of retail/commercial floor space in the Route 460 East/Mt. Athos Service Area without the prior written consent of the City. Notwithstanding anything herein to the contrary, the County does not need to obtain the City's approval to authorize the development or construction of any retail/commercial establishment to which potable water is provided by the Authority or the County by a source of supply other than water purchased from the City.
7. The Authority, City and County agree that upon completion of the water project to serve the Route 460 East/Mt. Athos Service Area , that discussions will be initiated on the feasibility and associated requirements for the City providing potable water capacity for the development of the Route 460 East corridor,

including retail/commercial revenue producing facilities, as more completely described in the Wiley & Wilson Feasibility Study.

8. The City chooses not to participate in construction of joint facilities within Campbell County at this time, reserving the right to negotiate joint use capacity at a later date, all pursuant to Section VIII.D. of the Contract. Should the City desire to purchase capacity for future sales to other political subdivisions, a separate implementation agreement outlining terms, including capacity rights and cost sharing, shall be negotiated.
9. Except as modified herein, all others terms of the Contract shall be applicable to the Route 460 East/Mt. Athos Service Area, including the "Water Charges" as set forth in Section V. of the Contract, which charges are valid until renegotiated pursuant to the terms of the Contract.

CAMPBELL COUNTY UTILITIES
AND SERVICE AUTHORITY

BY: _____
Chairman

ATTEST:

Secretary

CITY OF LYNCHBURG, VIRGINIA

City Manager

ATTEST:

Clerk of Council

COUNTY OF CAMPBELL, VIRGINIA

County Administrator

ATTEST:

Deputy Clerk